

ARTICLE 24**SCENIC ROADS REGULATIONS**

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- Terminology for publication of notices is revised for consistency: “local newspaper” will be defined in Article 1 as “a newspaper of general circulation in the Town of Grafton and the Town of Grafton official website.”
- Wording is clarified in a number of places
- It is made explicit that a Town Meeting vote is required in order to designate a road as a scenic road
- Explicitly authorized the Planning Board to establish a filing fee for a scenic road permit
- Explicitly authorized an applicant to request an extension of time to hold the public hearing
- Added a requirement that the Planning Board’s decision be filed with the Select Board, Town Clerk, and Tree Warden
- Added a “constructive approval” clause: if the Planning Board does not issue a timely decision, the application is automatically approved without conditions
- Added a clause to explain the appeal procedure
- Added a section to spell out how the bylaw is to be enforced

SECTION 1. Definitions. In the absence of contrary meaning established through legislative or judicial action pursuant to G.L. Chapter 40 Section 15C, the following terms contained in that statute shall be defined as follows:

"Cutting or Removal of Trees" shall mean the removal of one or more trees, trimming of major branches (living branches that are fully attached to the tree and have a diameter of three inches or more 12 inches from the point at which they connect to the tree) or cutting of roots, but not trimming or cutting of dead trees or dead branches.

"Repair, Maintenance, Reconstruction, or Paving Work" shall mean any work done within the right-of-way by any person or agency, public or private. Within this definition is any work on any portion of the right-of-way which was not physically commenced at the time the road was designated as a scenic road. Construction of new driveways or alteration of existing ones ~~in~~ is also included, ~~in so far as~~ to the extent that it takes place within the right-of-way.

"Road" shall mean a right-of-way of any way used and maintained as a public way including the vehicular traveled way plus necessary appurtenances within the right-of-way such as bridge structures, drainage systems, retaining walls, traffic control ~~devices~~ devices, and sidewalks, but not intersecting ~~street~~ streets or driveways. When the boundary of the right-of-way is in issue so that a dispute arises as to whether or not certain trees or stonewalls or portions thereof are within or without the way, the trees or stone walls shall be presumed to be within the way until the contrary is shown.

"Trees" shall mean a tree whose trunk has a diameter of four inches or more as measured ~~on~~ one foot above the ground.

SECTION 2. Purpose. These regulations are adopted pursuant to G.L. c.40 §15C (the Scenic Roads Act) and are intended to ensure that:

- a. Ways will be recommended for designation as scenic roads on stated criteria;
- b. Trees and stone walls along scenic roads will be protected and will not be altered except after a public hearing following notification of interested parties and after consideration of the work project by the Planning Board based on stated criteria set forth in Section 6 below.

SECTION 3. Recommending Designation as a Scenic Road

~~SECTION 3.1. Public Hearing.~~ G.L. Chapter 40, Section 15C authorized designation of a A road may be designated as a scenic road by the Town a majority vote of Town Meeting upon recommendation or request of the Planning Board, the Conservation Commission or Historical Commission. Prior to making any recommendation or request to Town Meeting regarding designation of a particular road as a scenic road, the Planning Board, Conservation Commission or Historical Commission, as the case may be, shall conduct a public hearing regarding such proposed designation. Notice of the public hearing shall be given by the body conducting the hearing pursuant to the requirements for notice set forth in Section 5.2 of these regulations by publication in a local newspaper at least seven days prior to the hearing.

~~SECTION 3.2. Criteria for Designation as a Scenic Road.~~ The Planning Board, Conservation Commission, or Historical Commission shall, in recommending which roads should be designated as scenic roads, consider the following criteria:

- a. Ways bordered by trees of exceptional quality, in terms of type, age, specimen size or spread, density of stand, or related flora;
- b. Ways bordered by stone walls;
- c. Ways bordered by any other natural or man-made features of aesthetic value;
- d. Ways for which any alteration would lessen the aesthetic value of natural or man-made features bordering them.

SECTION 4. Notification of Designation as Scenic Road

Upon the designation at by Town Meeting of any road as a scenic road, the Planning Board shall take the following steps within 30 days of such designation:

- a. Notify all municipal departments that may take any action with respect to such road;
- b. Notify the State Department of Public Works;
- c. Publish in the local paper by, in a local newspaper, a news release that the road, or roads, have been so designated;
- d. Indicate such designation on all maps currently in use by municipal departments; and
- e. Notify all utility companies or other such parties which may be working on the border of such road.

SECTION 5. Procedures for Obtaining Permits

5.1. Filing. Any person, organization, state or municipal agency seeking the written consent of the Planning Board under G.L.Ch. 40, Section 15(e) (The Scenic Roads Act) regarding the cutting or removal of trees or the tearing down or destruction of stone walls, or portions thereof shall file proposing the cutting or removal of trees or the tearing down or destruction of stone walls, or portions thereof, as part of repair, maintenance, reconstruction, or paving work with respect to a designated scenic road shall seek the written consent of the Planning Board for such alterations by filing a request with the Planning Board, together with the following:

- a. The text of a legal notice identifying the location of the proposed action in terms enabling readers to locate it with reasonable specificity on the ground without need for additional plans or references, and describing in reasonable detail the proposed changes to trees and stone walls;
- b. A statement of the purpose, or purposes, for the changes proposed;
- c. A list of owners of properties located in whole or in part within 100 feet of the proposed action;
- d. Except in the case of town agencies, a filing fee plus a deposit sufficient to cover the cost of advertising and notification, all as specified in the Planning Board fee schedule; and
- e. Any further explanatory material as may be required by the Planning Board.

5.2. Notice. The Planning Board shall, as required by statute, give notice of its public hearing by advertising twice in a newspaper of general circulation in the area local newspaper. This notice shall contain a statement as to the time, date, place, and purpose of the hearing with a reasonable description of the action proposed by the applicant. Copies of this notice shall also be sent to the Select Board, the Conservation Commission, the Historical Commission, the Municipal Engineer, the Tree Warden, the Department of Public Works, and the owners of property within 100 feet of the proposed action. Any defect in notice required under this section, will not affect the validity of the Planning Board's decision, except to the extent c. 40, S15C so provides.

5.3. Timing of Notice. The first publication of the notice shall be as soon as feasible after the Planning Board receives the request from the applicant, and shall in all cases be at least 14 days before the hearing. The last publication shall occur, as required by statute, at least seven days prior to the hearing.

5.4. Timing of Hearing. The Planning Board shall hold a public hearing within 30 days of the Planning Board meeting at which a properly filed request is received. The date and time of the public hearing shall be set outside of normal weekday work hours (8:00 a.m. - 5:00 p.m., Monday-Friday) so as to encourage maximum citizen participation. The timing may be extended upon written request by the applicant.

5.5. Timing of Decision. The Planning Board shall render a written decision on the request within 21 days of the closing of the public hearing. Copies of the decision shall be filed with the Town Clerk, Select Board, and Tree Warden. Failure to render a timely decision shall be construed as an unconditional approval of the request.

5.6 Performance Guarantee. Before endorsement of its approval on a plan, the Planning Board may require that the proposed work to be done, be secured by a bond sufficient in form and amount in the opinion of the Planning Board to ensure satisfactory performance of the proposed work. The

Planning Board's decision may include a requirement that a bond, sufficient in form and amount in the opinion of the Board, be posted to cover the costs of required work within the road right-of-way and to protect vegetation and stone walls. Such a bond shall be released upon determination by the Planning Board that the work has been satisfactorily completed in compliance with the permit.

5.7. Tree Warden. Whenever feasible, Planning Board ~~hearing~~ ~~hearings~~ shall be held in conjunction with those held by the Tree Warden acting under G.L. Ch. 87 (the Public Shade Tree Law). The consent of the Planning Board to a proposed action shall not be regarded as inferring consent by the Tree Warden, or vice versa. The Planning Board decision shall contain a condition that no work should be done until all applicable provisions of ~~the Public Shade Tree Law, G.L. Ch. 87,~~ G.L. c.87 and the Town of Grafton Shade Tree Bylaw have been complied with.

5.8. Appeal of Decision. The decision of the Planning Board shall be reviewable in the Superior Court in an action filed within 60 days thereof, in accordance with G.L. c.249 §4.

SECTION 6. Considerations. The Planning Board's decision on any application for proposed action ~~effecting~~ ~~affecting~~ scenic roads shall be based on consideration of the following:

- a. The degree to which the proposed action would adversely affect the scenic, aesthetic, and historical values upon which the scenic road designation was originally based;
- b. The necessity for the proposed action in terms of public safety, welfare or convenience;
- c. Availability of reasonable alternatives to the proposed action which could reduce or eliminate anticipated damage to trees or stone walls;
- d. Whether the proposed action would compromise or harm other environmental or historical values;
- e. Compensatory actions proposed, such as replacement of trees or walls;
- f. Consistency of the proposed action with previously adopted Town plans and policies.

SECTION 7. General. The Planning Board may adopt more detailed regulations for carrying out provisions hereunder.

SECTION 8. Enforcement

8.1 Enforcing Agent Failure to obtain or comply with a permit as specified in Section 5 herein shall be enforced by the Planning Board through its agents: the Town Planner, Zoning Enforcement Officer, Tree Warden, or other agent(s) designated by the Board.

8.2 Work Without a Permit For alterations that require the permit specified by Section 5.1, a person, organization or agency found to be performing such alterations without having obtained a permit shall be ordered to apply for a permit within 30 days of issuance of the order, shall suspend such work, and shall take any measures necessary to prevent damage until a permit is obtained.

The filing fee for applying for a permit pursuant to such an order shall include a late-filing surcharge specified in the Planning Board fee schedule.

For failure to apply for the required permit within 30 days of being ordered to do so, the violator shall be ordered to restore (see Section 8.5) the unauthorized alterations within 30 days or a time determined by the issuing officer to be more appropriate for the required restoration, and shall be punished by a fine of \$300.

In lieu of obtaining a permit for the unauthorized work, the violator may choose to restore the unauthorized alterations, in which case an order shall be issued requiring restoration (see Section 8.4) within 30 days or a time determined by the issuing officer to be more appropriate for the required restoration.

8.3 Non-Compliance with a Permit A person, organization or agency who, having obtained a permit, fails to fully comply with the permit shall be ordered to (1) restore (see Section 8.5) all unauthorized alterations and (2) comply with all conditions of the permit, within 30 days or a time determined by the issuing officer to be more appropriate for the specific violation.

8.4 Failure to Comply with an Order For failure to comply with an order for restoration or compliance within the time specified by the order, the violator shall be punished by a fine of \$300 for each day of continued non-compliance with that order.

8.5 Restoration A stone wall shall be restored or rebuilt to its original condition or better. A tree that was removed without permission shall be replaced with a new tree of a size and species deemed appropriate by the Tree Warden as a suitable replacement for the lost tree. All restoration shall be at the expense of the violator.

8.6 Non-Criminal Disposition Any enforcing agent (see Section 8.1) may elect to utilize the non-criminal disposition procedure set forth in G.L. c.40 §21D to impose the penalties specified in this section.

SECTION 8 9. Severability. If any section or portion of this By-Law is ruled invalid by a court of competent jurisdiction, such ruling will not affect the validity of the remainder of the ByLaw.